

TITLE: PRISON RAPE ELIMINATION ACT (PREA)

SCOPE: All Tompkins Rehabilitation and Corrections Center Residents, Staff and Services

PURPOSE: The purpose of this policy is to clarify procedural requirements that must be followed regarding PREA.

POLICY: Tompkins Rehabilitation and Corrections Center (TRCC) will follow PREA guidelines and procedures in the treatment of all residents in TRCC. This will include written policy and procedures mandating zero-tolerance towards all forms of sexual abuse, and sexual harassment and outlining the DOCR's approach to prevention, detection, and response to such conduct.

DEFINITIONS AND ACRONYMS:

- A. Abuse: The improper use or treatment of a resident that directly or indirectly affects the resident negatively; any intentional act that causes physical, mental or emotional injury to a resident.
- B. BHS: Behavioral Health Services
- C. Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- D. Deoxyribonucleic Acid or DNA: A nucleic acid that contains the genetic instructions used in the development and functioning of all known living organisms.
- E. DOCR: Department of Corrections and Rehabilitation
- F. DOJ: Department of Justice
- G. EMRS: Electronic Medical Records Systems
- H. Exigent Circumstances: Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of the facility.
- I. Filenet: An electronic storage database.
- J. Gender Non-Conforming: A person whose appearance or manner does not conform to traditional societal gender expectations.
- K. HIV: Human Immune Deficiency Virus
- L. Intersex: A person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex

- medical conditions are sometimes referred to as disorders of sex development.
- M. iTAG: The information management system utilized by adult and juvenile facilities.
 - N. JRCC: James River Correctional Center
 - O. Medical Practitioner: Any person practicing medicine to include the North Dakota State Hospital physicians, nurse practitioners, and physician assistants.
 - P. Mental Health Practitioner: A person who by education and experience is professionally qualified to provide counseling interventions designed to facilitate individual achievement of human development goals and remediate mental, emotional, or behavioral disorders, and associated distresses which interfere with mental health and development.
 - Q. NDHP: North Dakota Highway Patrol
 - R. NDSH: North Dakota State Hospital
 - S. Prison Rape Elimination Act of 2003 (PREA): Federal law that prohibits and seeks to eliminate sexual assaults and sexual misconduct in correctional institutions and community corrections settings.
 - T. Prison Rape Elimination Act Compliance Manager: The designated facility staff at each facility with sufficient time and authority to coordinate the facility's efforts to comply with the Prison Rape Elimination Act standards.
 - U. Prison Rape Elimination Act Coordinator: A senior-level position that reports directly to the agency head. The Prison Rape Elimination Act coordinator's responsibilities include developing, implementing, and overseeing the agency's plan to comply with the Prison Rape Elimination Act standards. He or she is also responsible for ensuring the completion of the assessment checklists in compliance with Prison Rape Elimination Act standards.
 - V. Resident: A person housed in the Tompkins Rehabilitation and Corrections Center.
 - W. SAFE: Sexual Assault Forensic Examiner
 - X. SANE: Sexual Assault Nurse Examiner
Sexual Abuse of a Resident by another Resident: Includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse which may include: persuasion, inducement, enticement or forcible compulsion, subjecting to sexual contact another

person who is incapable of giving consent by reason of custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained or mentally incapacitated; prostituting or otherwise sexually exploiting another person.

1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Y. Sexual Abuse of an Resident by a Staff Member, Contractor, or Volunteer:
Includes any of the following acts, with or without consent of the resident:

1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
6. Any attempt, threat or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs 1-5. of this section;

7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an resident and
 8. Voyeurism by a staff member, contractor, or volunteer.
- Z. Sexual Harassment: Includes:
1. Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident directed toward another; and,
 2. Verbal comments or gestures of a sexual nature to a resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- AA. Sexually Transmitted Diseases (STD): Any of various diseases, including cancrroid, chlamydia, gonorrhea, and syphilis, that are usually contracted through sexual intercourse or other intimate sexual contact.
- BB. Substantiated Allegation: Allegation that was investigated and determined to have occurred.
- CC. TASC: Female housing unit of the TRCC program
- DD. Transgender: A person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.
- EE. TRCC: Tompkins Rehabilitation and Corrections Center
- FF. Unfounded Allegation: Allegation that was investigated and determined not to have occurred.
- GG. Unsubstantiated Allegation: Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- HH. Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
- II. Volunteer and Contractor Resident Contact: Any contact with residents that occurs while the volunteer or contractor is not escorted or observed by staff. These persons will receive Prison Rape Elimination Act training prior to entering Tompkins Rehabilitation and Corrections Center unescorted or unsupervised. Volunteer and contractor acknowledgement forms will be retained in the volunteer's contractor's file by designated facility staff.

- JJ. Voyeurism by a Staff Member, Contractor, or Volunteer: An invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at an resident who is using a toilet in his or her room to perform bodily functions; requiring a resident to expose their buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

PROCEDURES: (PREA STANDARD 115.211) TRCC has zero-tolerance towards all forms of sexual abuse and sexual harassment. The purpose of these procedures is to describe how PREA will be implemented in TRCC. The program will designate a PREA compliance manager with oversight provided by the DOCR PREA Coordinator. The PREA Coordinator will have sufficient time and authority to implement and oversee DOCR efforts to comply with PREA standards in all of its facilities.

RESPONSIBILITIES: (PREA STANDARD 115.211)

1. The TRCC PREA Coordinator will:

- Assist with the development and implementation of PREA-related policies.
- Develop and coordinate procedures to triage allegations received and identify, monitor, and track incidents of sexual abuse.
- Identify and track referrals of allegations to law enforcement and prosecutors.
- Develop and implement a comprehensive system to audit compliance with PREA policies and applicable laws.
- Oversee monitoring of PREA compliance with volunteers and contractors.
- Keep management informed on PREA-related issues.
- Maintain a memorandum of understanding for external victim advocacy.
- Maintain PREA content for the department website, including publication of required information and documents.
- Serve as the PREA liason for the NDSH

2. The TRCC PREA compliance manager will:

- Serve as a point of contact for the PREA Coordinator.
- Oversee completion of scheduled PREA vulnerability assessments.

- Coordinate audit preparations.
- Coordinate corrective action plans and ensure follow up.
- Track completion of PREA Risk Assessments for substantiated allegations of resident-on-resident sexual abuse or sexual harassment and staff-on-resident sexual abuse or sexual harassment.
- Ensure checks are performed to verify the PREA telephone numbers posted on or near all resident telephones.
- Perform a monthly functionality test of a random sample of resident telephones to verify the toll-free number is operational.
- Perform monthly checks to verify posters and brochures provided by the TRCC are posted in areas accessible to residents and the public.
- Monitor and provide technical resources to the PREA investigator.

SUPERVISION AND MONITORING: (PREA STANDARD 115.213)

1. TRCC will develop, document, and comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities will take into consideration:
 - Generally accepted detention and correctional practices;
 - Judicial findings of inadequacy;
 - Findings of inadequacy from federal investigative agencies;
 - Components of the facility's physical plant (including "blind-spots" or areas where staff or residents may be isolated);
 - The composition of the resident population;
 - The number and placement of supervisory staff;
 - Facility programs occurring on a particular shift;
 - Applicable state or local laws, regulations, or standards;
 - The prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment;

- Ensure staffing patterns are complied with and document and justify all deviations for the staffing plan;
- Annually, in consultation with the PREA Coordinator required by § 115.211, the agency will assess, determine, and document whether adjustments are needed to the staffing plan, video monitoring systems, and other monitoring technologies and available resources to ensure adherence to the staffing plan

Procedure:

- a. All TRCC staff will be reviewed in conjunction with the annual nursing staff review. (See Appendix A)
- b. Results of the review will be collected by the Clinical Director and filed in a separate PREA file.
- c. Security will review video monitoring and technologies annually and will file results in a separate PREA file.

LIMITS TO CROSS-GENDER VIEWING (PREA STANDARD 115.215)

1. Employees will document all detailed searches, pat-down and room searches of ALL residents. Cross-gender searches other than pat-down searches are not permitted.

Procedure:

- a. A Tracking log will be kept on each ward to document each time a search is completed. All searches will be included: wand searches, pat searches, detailed searches, and room searches. Data will include date, time, resident name, type of search, staff initials conducting search, as well as gender of staff conducting search. (see Appendix B)
- b. The tracking log will be forwarded to BHS assistants who will document in the electronic medical record so that data can be tabulated

Training

- All TRCC staff will receive training on detailed searches and pat downs, to include searches of transgender and intersex residents. This training will be provided by JRCC staff. Completion of this training will be documented in the staff's employee record. Training will be conducted every 2 years.
- Staff will not conduct any detailed or pat down searches of residents until this training has been completed.

Transgender/Intersex Residents Searches

- Staff will not search or physically examine a transgender or intersex residents for the sole purpose of determining the residents's genital status.
- If the residents's genital status is unknown, it may be determined through conversation with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- During the initial interview with a transgender or intersex resident, staff will ask the resident if they prefer to be searched by a male or female staff.

Cross Gender Searches

- Staff will not conduct cross-gender detailed searches at any time. Same gender staff will be located to conduct the detailed search.
- Male staff will not conduct a pat down search (an act of searching a person for concealed items such as weapons or illegal drugs, made by passing the hands over their clothing) on a female resident, however female staff can conduct pat down searches of male residents.

Quantity and Documentation

- Staff will conduct a minimum of 10 detailed and/or pat down searches per week.
 - Staff will also conduct a minimum of 30 bunk searches per month.
 - All searches conducted will be documented in a resident's weekly ward note (electronic). This will include date, time, location, contraband found, and staff conducting the search.
3. Residents will be allowed to shower, perform bodily functions, and change clothing without staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine checks.

4. Male staff working in the TASC will announce their presence during the beginning of the shift when entering a resident housing unit. Signage will be posted in conspicuous areas throughout the institution advising residents that staff of the opposite gender may be present.

Procedure:

RESIDENT ORIENTATION: (PREA STANDARD 115.216)

Procedures:

- a. All residents will receive PREA information in the form of a Brochure and detailed information in the Resident Handbook given at admission. (see Appendix E)
 - b. Residents will sign and date an acknowledgement of having received and understood the information. (see Appendix F)
- - For residents with limited English proficiency, staff will call interpretation Services: 877-650-5341 with the following information:
 - a. Account Number: 9823
 - b. Full Name of Employee calling
 - c. Department Number: 312
 - d. Language Needed
 - **For residents who are deaf, staff will call the Human Resource Department Monday through Friday with the name of the patient, date and time service needed, length of time and purpose. After hours, call Communication Services for the Deaf 800-467-5341**
 - **Residents who have intellectual, psychiatric, or speech disabilities will review materials with staff to ensure comprehension.**
 - **TRCC will not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances, and must be fully documented, where an extended delay in obtaining an effective interpreter could compromise the residents safety, the performance of first responder duties under 115.264, or the investigation of residents allegations.**

- a. Residents will sign and date an acknowledgement of having received and understood the information. Acknowledgement will be filed in a separate PREA file kept by the Clinical Coordinator. (see Appendix F)
- b.

HIRING AND PROMOTING DECISIONS: (PREA STANDARD 115.17)

1. TRCC will not hire or promote anyone who may have contact with residents, and will not enlist the services of any contractor who may have contact with residents, who:
 - Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.
 - Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph a. or b. of this section.

Procedures:

- a. Human Resources includes that the NDSHI and TRCC will consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, that may have contact with residents.
- b. Before hiring new employees who may have contact with residents, TRCC will:
 - Perform a criminal background records check; and
 - Consistent with federal, state and local law, make the best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
 - Questions added to the PeopleSoft employee questionnaire:
 - Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.

- Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph a. or b. of this section.
 - TRCC will also perform a criminal background records check before enlisting the services of any contractor who may have contact with residents.
- c. Human Resources for TRCC will conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents.
 - a. Background checks will be triggered electronically through PeopleSoft and completed by Human Resources staff.
 - b. TRCC will ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph 1. a., b., and c. of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The TRCC will also impose upon employees a continuing affirmative duty to disclose any such misconduct.
 - c. Material omissions regarding such misconduct, or the provision of materially false information, will be grounds for termination.
 - d. Unless prohibited by law, TRCC will provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

UPGRADES TO FACILITIES AND TECHNOLOGIES: (PREA STANDARD 115.218)

1. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, TRCC will consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse by involving the PREA Coordinator in the process..
2. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, TRCC will consider how such technology may enhance the agency's ability to protect residents from sexual abuse by involving the PREA Coordinator in the process.

EVIDENCE PROTOCOL AND FORENSIC MEDICAL EXAMINATIONS: (PREA STANDARD 115.221)

1. TRCC will follow evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

Procedures:

- a. Coordinated response protocol will assure consistent appropriate response. (see Appendix H)
 - b. TRCC will offer all victims of sexual abuse access to forensic medical examinations through the James River Medical Center emergency room without financial cost. The examinations will be performed by a SAFE or SANE through Central Valley Health. (see Appendix I)
 - c. TRCC will make available to the victim a victim advocate from Safe Shelter.. If such services are not available the TRCC will provide a qualified agency staff member.
 - d. The North Dakota Highway Patrol will conduct criminal investigations of sexual abuse for the TRCC.
2. As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member will accompany and support the victim through the forensic medical examination process and investigatory interviews and will provide emotional support, crisis intervention, information, and referrals.

POLICIES TO ENSURE REFERRALS OF ALLEGATIONS FOR INVESTIGATIONS. (PREA STANDARD 115.222)

- a. TRCC will ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

Procedures:

- a. TRCC will ensure that allegations of sexual abuse or sexual harassment are referred for investigation to the ND Highway Patrol, the agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency will document all such referrals.
- b. TRCC will make its PREA policy available on the TRCC Website. Adult PREA statistics will also be posted annually.

EMPLOYEE TRAINING: (PREA STANDARD 115.231)

1. All staff will be trained on how to recognize the signs of injurious sexual conduct, and understand their responsibility in the detection; prevention, investigation, and reporting of injurious sexual conduct during new employee orientation and every two years thereafter. Training topics will include the following:
 - Zero-tolerance policy for sexual abuse and sexual harassment;
 - How to fulfill employee responsibilities under TRCC sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - Residents' right to be free from sexual abuse and sexual harassment;
 - The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - The dynamics of sexual abuse and sexual harassment in confinement;
 - The common reactions of sexual abuse and sexual harassment victims;
 - How to detect and respond to signs of threatened and actual sexual abuse;
 - How to avoid inappropriate relationships with residents;

- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Procedures:

- a. Each employee will be required to sign a receipt after completion of orientation training, stating that they understand PREA laws and guidelines. (See Appendix J)
- b. PREA refresher training will be offered through JRCC at two-year intervals. The training will be logged on PeopleSoft. Training records including names, dates, and topics will be kept in the Clinical Coordinators files.
- c. Specialized training will be provided for sexual abuse investigators, mental health professionals and medical staff assigned to provide care to victims of sexual assault. Training will be logged on PeopleSoft. Training records including names, dates, and topics will be kept in the Clinical Coordinators files.

VOLUNTEER AND CONTRACTOR TRAINING: (PREA STANDARD 115.232)

1. The PREA compliance manager will ensure that all contract employees and volunteers are trained on their responsibilities regarding sexual abuse and sexual harassment with residents. Volunteers will be trained on policy and procedures relative to PREA. This training will be repeated every two years. The DOCR training material will be mailed to renewing volunteers, along with their application, every two years, as required. Training material will be maintained by the Behavioral Health Services Clinical Coordinator confirming that volunteer and contractors understand the training they have received

Procedures:

2. Each Volunteer, Contractor or Vendor will be required to sign a receipt after completion of orientation training, stating that they understand PREA laws and guidelines. (see Appendix K & L)

The orientation will consist of viewing the PREA training video along with signing that they have read and understand the requirements on the PREA compliance acknowledgement form. **RESIDENT EDUCATION: (PREA STANDARD 115.233)**

1. During the intake process, residents will receive information explaining TRCC's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

Procedures:

- a. Ward staff will review PREA information and hand out the PREA Brochure and Resident Handbook describing the zero-tolerance policy, definitions and reporting. Residents will sign an acknowledgement of receiving and understanding the information.
- b. Within 15 days of intake, TRCC will provide comprehensive education to residents during the orientation process in person and through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
- c. The orientation will consist of viewing the PREA training video along with signing that they have read and understand the requirements on the PREA compliance acknowledgement form. (see Appendix M)
- d. Key information is continuously and readily available or visible to residents through posters, brochures and the Resident Handbook.

SPECIALIZED INVESTIGATION TRAINING: (PREA STANDARD 115.34)

1. Investigators will receive specialized training in conducting sexual abuse investigations in confinement settings. This includes techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

Procedures:

- a. Investigators will have completed and will maintain training provided by the DOCR. (see Appendix N)
- b. Training will be logged in PeopleSoft including names and dates.

MEDICAL AND MENTAL HEALTH CARE: (PREA STANDARD 115.235)

1. TRCC full-time and part-time medical and mental health care practitioners will be trained in.
 - How to detect and assess signs of sexual abuse and sexual harassment;

- How to preserve physical evidence of sexual abuse;
- How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- How and to whom to report allegations or suspicions of sexual abuse and sexual harassment;
- TRCC will maintain documentation that medical and mental health practitioners have received the training referenced in this standard.

Procedures:

- a. All medical staff will complete the NIC electronic training.
- b. Training will be logged on PeopleSoft. A signed acknowledgement of training completion and understanding will be kept in the medical staff files.

**SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS.
(PREA STANDARD 115.241)**

1. All residents will be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other residents or sexually abusive toward other residents.
2. Residents will be screened within 72 hours of arrival at TRCC for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments are made accordingly.

Procedures:

- a. Within 72 hours of arrival the DOCR case Manager will conduct the “24 hour transfer screening” on all admissions to their respective wards. This information will be disseminated to TEAM members within that 72 hours period to determine housing. Prior to this determination any resident will only be in a room or adjoining room with other residents that score a PREA rating of unrestricted. If an initial screening has previously been completed, this score should be compared against the original and if they do not match. The DOCR case manager will complete an “initial assessment”. The PREA rating will be provided to TEAM and work coordinator.
- b. The intake screening tool will be the 24 hour Intake/Transfer PREA screening tool and will assess residents for risk of sexual victimization. (see Appendix 0)

- c. Within 30 days of arrival the DOCR Case Manager will complete another screening and disseminate the information to TEAM members.
3. The intake screening will consider, at a minimum, the following criteria to assess residents for risk of sexual victimization:
 - Whether the resident has a mental, physical, or developmental disability;
 - The age of the resident;
 - The physical build of the resident;
 - Whether the resident has previously been incarcerated;
 - Whether the resident's criminal history is exclusively nonviolent;
 - Whether the resident has prior convictions for sex offenses against an adult or child;
 - Whether the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - Whether the resident has previously experienced sexual victimization;
 - The resident's own perception of vulnerability; and
 - Whether the resident is detained solely for civil immigration purposes.

Procedures:

- a. The initial screening will consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the DOCR, in assessing residents for risk of being sexually abusive.
- b. Upon completion of the screening, residents may be identified as being vulnerable or sexually aggressive according to their responses to specific questions on the screening form.
- c. Within a set time period not to exceed 30 days from the resident's arrival at the facility, the facility will reassess the resident's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

- d. A resident's risk level will be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the resident's risk of sexual victimization or abusiveness.
- e. Residents may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during screening or assessment.
- f. TRCC will implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents

USE OF SCREENING INFORMATION: (PREA STANDARD 115.242)

- 1. TRCC will use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high-risk of being sexually victimized from those at high-risk of being sexually abusive.

Procedures:

The TRCC will make individualized determinations about how to ensure the safety of each resident.

- b. In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, TRCC staff will consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- c. Placement and programming assignments for each transgender or intersex resident will be reassessed at least twice each year to review any threats to safety experienced by the resident.
- d. A transgender or intersex resident's own views with respect to his or her own safety will be given serious consideration.
- e. Transgender and intersex residents will be given the opportunity to shower separately from other residents.
- f. The TRCC will not place lesbian, gay, bisexual, transgender, or intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a

consent decree, legal settlement, or legal judgment for the purpose of protecting such residents.

Procedures:

- a. Once the DOCR case manager determines the PREA rating this rating of Unrestricted, Potential Victim, Known Victim, Potential aggressor or Known aggressor, the CM will immediately provide to Team members for the respective ward for room assignment purposes. This score will be shared with the work coordinator (Wanda) to be used when assigning spot jobs.
- b. Procedure for Use of Screening tool: The initial screening will consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the DOCR, in assessing residents for risk of being sexually abusive.
- g. Residents identified as high-risk with a history of sexually assaultive behavior will be assessed by a qualified staff member. Residents with a history of sexually assaultive behavior are identified, monitored, and counseled.
- h. Residents identified as at risk for sexual victimization, will be assessed by a qualified staff member. Residents at risk for sexual victimization will be identified, monitored, and counseled.
- i. Known Victims shall be housed only with other Known Victims, Potential Victims, or Unrestricted.
- j. Potential Victims shall only be housed with other Potential Victims, Unrestricted, or Known Victims.
- k. Unrestricted can be housed with any: Known Victims, Potential Victims, Unrestricted, Potential Aggressors, or Known Aggressors.
- l. Potential Aggressors shall either be housed with other, Potential Aggressors Unrestricted or Known Aggressors.
- m. Known Aggressors shall only be housed with other Known Aggressors, Potential Aggressors, or Unrestricted.

*Known Victims and Potential Victims should never be housed with Potential Aggressors or Known Aggressors.

- n. Known Victims and Potential Victims may participate in programming and work assignments with Known Aggressors and Potential Aggressors as long as there is adequate staff supervision (visual observation at all times).

RESIDENT REPORTING: (PREA STANDARD 115.211)

1. Residents who are victim of sexual abuse have the option to report the incident to staff or an external agency (ND Highway Patrol).
2. Residents may report incidents of sexual abuse or sexual harassment to any employee, contractor, or volunteer. They may do this verbally, by writing a resident communicate your needs form, filing a grievance, or by using the resident phone system to contact TRCC Clinical Director, TRCC Case Manager, or the Crisis Help line. This information is given to the PREA compliance manager, as soon as possible, after the report is made in order to begin the investigation and to preserve the crime scene and any potential evidence.
3. When the PREA compliance manager receives a report of any of the above types of sexual conduct, they must determine the type of sexual contact that occurred, according to definitions found under the definitions section of these procedures, and begin the investigation as outlined below.

EXHAUSTION OF ADMINISTRATIVE REMEDIES: (PREA STANDARD 115.252)

1. Communicate Your Needs/grievance for sexual abuse of a resident by another resident, staff, and contractor or volunteer (PREA related incidents). TRCC has established the following rules in accordance with PREA Standard 115.52 relating to sexual abuse.

Procedure:

- a. TRCC has no time limit on when a resident may submit a complaint regarding an allegation of sexual abuse. However, TRCC will apply otherwise applicable time limits to any portion of a Communicate Your Needs that does not allege an incident of sexual abuse.
- b. TRCC does not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- c. TRCC will ensure that residents who allege sexual abuse may submit a Communicate Your Needs (NDSH form #461) without submitting it to a staff member who is the subject of the complaint, and such form is not referred to a staff member who is the subject of the complaint.
- d. TRCC will issue a final agency decision on the merits of any portion of the complaint alleging sexual abuse within 90 days of the initial filing of the

- Communicate Your Needs and computation of the 90 day time period will not include time consumed by residents in preparing any administrative appeal.
- e. TRCC may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency will notify the resident in writing of any such extension and provide a date by which a decision will be made.
 - f. At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level.
 - g. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, will be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and will also be permitted to file such requests on behalf of residents.
 - h. If a third party files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
 - i. If the resident declines to have the request processed on his or her behalf, the agency will document the resident's decision.
 - j. In the event a resident believes they are in substantial risk imminent of sexual abuse by another resident, staff, contractor or volunteer, the resident may file an emergency Communicate Your Needs with the Direct Care Supervisor. After receiving an emergency Communicate Your Needs alleging a resident is subject to a substantial risk of imminent sexual abuse, the Direct Care Supervisor will immediately forward the complaint (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Clinical Team for possible immediate corrective action. The Clinical Team will provide an initial response within 48 hours, and will issue a final decision on behalf of TRCC within five calendar days. The initial response and final agency decision will document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency Communicate Your Needs.
 - k. The agency may discipline a resident for filing a Communicate Your Needs related to alleged sexual abuse only where the agency demonstrates that the resident filed the Communicate Your Needs in bad faith.
 - l. **Grievance procedure:** If a resident is dissatisfied with the Clinical Team's Response to their Communicate Your Needs, they may file a Grievance (NDSH form # 455) with the clinical director. (see Appendix P)
 - m. If the alleged incident occurred outside of TRCC, residents may file a grievance with the DOCR.

**RESIDENT ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES
(PREA STANDARD 115.253)**

1. TRCC will provide residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents mailing addresses and telephone numbers, including toll-free hotline numbers where available, of victim advocacy and rape crisis organizations. The facility will enable reasonable communication between residents and the organizations.

Procedure:

- a. TRCC will inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- b. TRCC will enter into an agreement with Safe Shelter to provide residents with confidential emotional support services related to sexual abuse. TRCC will maintain copies of agreements and/or documentation showing such agreements.
- c. TRCC will also provide phone and written contact information to Safe Shelter provide residents with confidential emotional support services related to sexual abuse.
- d. TRCC will also provide contact information to Just Detention International to provide residents with confidential emotional support services related to sexual abuse.
- e.

THIRD-PARTY REPORTING: (PREA STANDARD 115.254)

- 1. TRCC will receive third-party reports of sexual abuse and sexual harassment and will distribute information through brochures and posted signs on how to report sexual abuse and sexual harassment on behalf of a resident. This information will be posted on the TRCC website as well as posters throughout TRCC.

STAFF AND AGENCY REPORTING DUTIES: (PREA STANDARD 115.261)

- 1. TRCC staff will report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

Procedures

- a. Staff will report to immediate supervisor. Staff will not reveal any information related to a sexual abuse report to anyone other than to the extent necessary. Information will be limited to making treatment, investigation, and other security and management decisions.
- b. Mental Health and Medical practitioners report as required by law.

- f. Staff will report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to their immediate supervisory
- g. TRCC Coordinated Response procedures will be followed.

AGENCY PROTECTION DUTIES: (PREA STANDARD 115.262)

1. When TRCC learns that a resident is subject to a substantial risk of imminent sexual abuse, it will take immediate action to protect the resident.

Procedures:

- a. Separate residents: to the best of TRCC staff's ability while an investigation is ongoing, those involved will be separated at all times.
- b. For male inmates if housing permits have Potential Aggressor taken to JRCC until investigation and determination is complete.
- c. For Female inmates, first check for bed availability at Stutsman County Correctional Center to place Potential Aggressors until an investigation and determination is complete.
- d. For community case and for inmates if space is not available at the outside entities; the staff at TRCC must make every accommodation to keep those involved separated without, "punishing" the potential victim in the investigation. This should include potential transfers from the CRRP ward to TRCU ward and in the TASC building movement from the "pink" to the "blue" side of the ward. Meal time should also be at different times and monitored closely by staff.
- e. The aggressor in these cases will be restricted to the ward.

REPORTING TO OTHER CONFINEMENT FACILITIES. (PREA STANDARD 115.263)

1. Upon receiving an allegation a resident was sexually abused while confined at another facility, the PREA compliance manager will notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

Procedures:

- a. Notification will be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- b. TRCC will document using an incident report that it has provided notification..
- c. The facility Director or agency office that receives the notification will ensure the allegation is investigated in accordance with the PREA standards.

STAFF FIRST RESPONDER DUTIES: (PREA STANDARD 115.264)

1. Upon learning of an allegation that a resident was sexually abused, the first security staff member to respond to the report shall be required to:
 - a. Separate the alleged victim and abuser;
 - b. Notify immediate supervisor of the alleged incident
 - c. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
 - d. If the abuse occurred within the last 92 hours, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
 - e. If the abuse occurred within the last 92 hours, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

COORDINATED RESPONSE: (PREA STANDARD 115.265)

TRCC will use this policy and procedure as a plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

1. Allegations of sexual abuse and harassment will be divided into “**Penetration Events - 92 hours or less**” and “**Penetration Events Over 92 hours and Non-Penetration Events**”. All allegations will be recorded on the PREA Allegation Event Checklist. This data will be entered into an electronic file. The PREA Coordinator will keep a paper copy in the PREA files. (see Appendix Q)

Procedures:

All PREA events require the alleged victim and alleged perpetrator to be separated and the alleged victim to be kept safe.

Penetration Event – 92 hours or less: Consists of penetration of the mouth, anus, buttocks, or vulva, of any kind, however slight, by hand, finger, object, instrument or penis that allegedly occurred within the last 92 hours or less.

First Responder will:

- Ensure safety of alleged victim;
 - Request alleged victim not to take any actions that could destroy physical evidence including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating until he/she is seen by the investigator;

- Secure crime scene when applicable
- Make immediate notification to Supervisor.

Supervisor will make immediate telephone notifications to the following, utilizing the **PREA Allegation Event Data Checklist**:

- Administrator on Call
- Investigators
 - The investigator will notify local law enforcement
- If the facility needs to have the alleged perpetrator removed from the premises immediately, they should contact law enforcement and inform the investigator of such.
- The alleged victim should be held in the treatment room until law enforcement or the investigator arrives.
- Medical [notify hospital of sexual assault and transport to the JRMCC Emergency Room. SANE/SAFE from Central Valley Health will be notified by Emergency Room staff to report to JRMCC.
 - If the client refuses to submit to a forensic examination this should be noted and signed by the client.
 - The refusal should be attached to the PREA Allegation Event Data Checklist
 - Mental health and advocacy services will be contacted and provided.
- Mental health professional through the physician or LIP on call. Inform of sexual assault and schedule an emergency assessment
- Unit Supervisor
- PREA Site Coordinator/Clinical Director of TRCC

Penetration Events – Over 92 hours and Non-Penetration Events: This includes penetration that allegedly occurred over 92 hours prior to the report, and sexual abuse and sexual harassment

First Responder will:

- Ensure safety of alleged victim;
- Make immediate notification to the Supervisor.

- **Supervisor** will make immediate notifications to the following in the manner described below utilizing the **PREA AllegationEvent Data Checklist**:
 - Administrator on Call
 - Investigator
 - The investigator will notify local law enforcement
 - If the facility needs to have the alleged perpetrator removed from the premises immediately, they should contact law enforcement and inform the investigator of such.
- In penetration events the investigator will respond the next business day.
 - On non-penetration events – the PREA compliance manager will determine response.
 - PREA Compliance Manager – email the PREA Allegation Event Data Checklist
- On non-penetration events the PREA compliance manager will:
 - Determine if the allegations meets the criteria for an investigation by the next business day.
 - If an investigation is warranted, the PREA compliance manager will complete the request for investigation and notify the Clinical Director and PREA coordinator
 - If the allegation does not meet the criteria for an investigation, the iPREA compliancemanager will notify the Clinical Director and PREA Coordinator no later

than the next business day. Investigation into the incident must be conducted in house.

- On call physician contact Mental Health Provider for a mental health assessment
- PREA Coordinator- email
- Unit Supervisor- email

PRESERVATION OF ABILITY TO PROTECT RESIDENTS FROM CONTACT WITH ABUSERS. (PREA STANDARD 115.266)

1. Standard § 115.66 does not apply to North Dakota since there are no collective bargaining agreements. North Dakota is a right to work state.

AGENCY PROTECTION AGAINST RETALIATION: (PREA STANDARD 115.267)

1. TRCC will protect all adult residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff.

Procedures:

- a. The PREA compliance manager in conjunction with the PREA Coordinator is assigned to ensure there is no retaliation. This will be assured through:
 - housing changes or transfers for resident victims or abusers
 - removal of alleged staff or resident abusers from contact with victims
 - emotional support services for residents or staff that fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
 - b. For at least 90 days (typically until discharge) following a report of sexual abuse, TRCC Program Supervisors and DOCR Program Managers on each ward will monitor the conduct and treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff. Program supervisors will act promptly to remedy any perceived retaliation. Items the facility will monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. TRCC supervisors will continue monitoring beyond 90 days if the initial monitoring indicates a continuing need.
 - c. In the case of residents, monitoring will also include periodic status checks no less than once per shift.
 - d. Documentation will be completed to describe monitoring and any action taken. The documentation will be kept in resident medical record.
2. If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency will take appropriate measures to protect that individual against retaliation using the same procedures noted above.
 3. TRCC's obligation to monitor will terminate if the investigation determines that the allegation is unfounded.

CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS: (PREA STANDARD 115.271)

1. TRCC conducts its own investigations into allegations of sexual abuse and sexual harassment. Investigations will be done promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

Procedures:

- a. Where sexual abuse is alleged, TRCC will use investigators who have received special training in sexual abuse investigations.
 - b. Investigators will not complete evaluations on residents in their assigned work areas.
 - c. Investigators will gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; will interview alleged victims, suspected perpetrators, and witnesses; and will review prior complaints and reports of sexual abuse involving the suspected perpetrator.
 - d. When the quality of evidence appears to support criminal prosecution, the TRCC investigator may proceed with the administrative investigation at the same time the criminal investigation is conducted, unless directed otherwise by the Clinical Director or prosecutor. Information obtained during the investigation will not be shared between the criminal and administrative investigators.
2. The credibility of an alleged victim, suspect, or witness will be assessed on an individual basis and will not be determined by the person's status as resident or staff. The TRCC will not require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
 3. Administrative investigations:
 - a. Will include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - b. Will be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
 4. Criminal investigations will be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

- a. Substantiated allegations of conduct that appears to be criminal will be referred to the ND Highway Patrol for investigation and for prosecution.
- b. TRCC will retain all administrative and criminal written reports referenced for as long as the alleged abuser is incarcerated or employed by the agency, plus five years or in accordance with state statute.
- c. The departure of the alleged abuser or victim from employment or control of the facility or agency will not provide a basis for terminating an investigation.
- d. When outside agencies investigate sexual abuse, the TRCC investigators will cooperate with outside investigators and will remain informed about the progress of the investigation.

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EVIDENTIARY STANDARD FOR ADMINISTRATIVE INVESTIGATIONS AND EMPLOYEE COMPLIANCE. (PREA STANDARD 115.272)

- 1. The TRCC will impose no standard higher than a preponderance (51 percent) of the evidence in determining whether allegations of sexual abuse are substantiated.

Procedures:

- a. The PREA investigator will meet with the resident and review the resident's statement. If a crime may have been committed, the staff investigator will request assistance from the NDHP and work, as a liaison, with the investigative agency in the investigation.
- b. Employees will cooperate fully by providing all pertinent information during the investigation. Failure of an employee to answer any inquiry fully will be grounds for disciplinary action. Employees may not make any attempt to contact the resident victim from the time the allegation is first made, until the completion of the investigation.
- c. Discipline:
 - Any sexual contact or sexual harassment between staff and resident, volunteer and resident, or contract personnel and resident, regardless of consensual status, is prohibited, and subject to administrative disciplinary and criminal sanctions.

REPORTING TO RESIDENTS (PREA STANDARD 115.273)

- 1. Following an investigation, the PREA investigator, or staff member designated by the PREA investigator will inform the resident verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.**
- 2. If the investigation was conducted by the ND Highway Patrol, the PREA compliance manager will request relevant information from the agency and inform the resident.**
- 3. If there has been a substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against a resident, the agency must subsequently inform the resident whenever:**
 - 1. The staff member is no longer posted within the residents unit**
 - 2. The staff member is no longer employed at the facility**
 - 3. The TRCC learns that the staff member has been charged or convicted on an offense related to sexual abuse within the facility**
- 4. Following a resident's allegation that he or she has been sexually abused by another resident, the TRCC subsequently will inform the alleged victim whenever:**
 - 1. The TRCC learns that the alleged abuser has been charged or convicted for sexual abuse within the facility.**
- 5. All notifications will be documented in the resident's medical record.**
- 6. The TRCC obligation to report under this standard terminates if the resident is released from custody.**

DISCIPLINARY SANCTIONS FOR TRCC STAFF (PREA STANDARD 115.276)

- Staff will be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.**

- Termination will be the presumptive disciplinary sanction for staff who engaged in sexual abuse with a resident or ward of the State of North Dakota.
- Disciplinary sanctions for violations of TRCC policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) will be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS. (PREA STANDARD 115.277)

1. Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with residents and will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
2. Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with residents and will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
 - a. TRCC will take appropriate remedial measures, and will consider whether to prohibit further contact with residents, in the case of any other violation of NDSH sexual abuse or sexual harassment policies by a contractor or volunteer.

DISCIPLINARY SANCTIONS FOR RESIDENTS:(PREA STANDARD 115.278)

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3. Residents will be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident

engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

- a. Sanctions will be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.
- b. The disciplinary process will consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- c. Therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse will be offered. The facility will consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits. The facility may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- d. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

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ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES. (PREA STANDARD 115.282)

1. Resident victims of sexual abuse will receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

Procedures:

- a. If a sexual assault examination is determined appropriate, explain the necessity and process of a sexual assault examination to the victim.
- b. Contact the supervisor to make arrangements for transporting the resident to the outside medical facility.

- c. Ensure qualified mental health staff is available to provide services to the resident, if requested.
 - d. The resident will be taken to the James River Medical Center for a sexual assault examination. The examination will be performed by a trained SANE or SAFE.
2. Treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any

ONGOING MEDICAL AND MENTAL HEALTH CARE FOR SEXUAL ABUSE VICTIMS AND ABUSERS. (PREA STANDARD 115.283)

1. The evaluation and treatment of such victims will include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

Procedures:

- a. TRCC will provide such victims with medical and mental health services consistent with the community level of care.
- b. Resident victims of sexually abusive vaginal penetration will be offered pregnancy tests.
- c. If pregnancy results from the conduct described in (4) above in this section, such victims will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- d. Resident victims of sexual abuse while incarcerated will be offered tests for sexually transmitted infections as medically appropriate.
- e. Treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- f. TRCC will conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

DATA COLLECTION AND INCIDENT REVIEWS: (PREA STANDARD 115.286)

1. Such review will ordinarily occur within 30 days of the conclusion of the investigation. The review team will include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
2. The review team consisting of the PREA Coordinator, PREA compliance managers and investigators.

Procedures:

- a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- b. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
- c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- d. Assess the adequacy of staffing levels in that area during different shifts;
- e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
- f. Prepare a report of its findings, including but not necessarily limited to determinations and any recommendations for improvement and submit such report to the PREA compliance manager, PREA Coordinator, Director of DOCR, and superintendant of the NDSH.
- g. The facility will implement the recommendations for improvement, or will document its reasons for not doing so.

DATA COLLECTION: (PREA STANDARD 115.287)

1. TRCC will collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions.

Procedures:

- a. All completed PREA investigations will be uploaded in a data base by PREA compliance manager within two working days after completion of the investigation.
- b. The TRCC will aggregate the incident-based sexual abuse data quarterly in Quality Management meetings. An annual report will be completed in January for the previous year. Results will be posted on the TRCC website.
- c. The incident-based data collected will include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the DOJ.
- d. The TRCC will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

DATA REVIEW FOR CORRECTION ACTION. (PREA STANDARD 115.288)

1. The TRCC will review data collected and aggregated pursuant to PREA Standard 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training to include:

Procedures:

- a. Problem areas will be identified in Quality Management reports each quarter.
- b. Corrective action will be documented in the Quality Management minutes each quarter or as needed monthly.
- c. Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
 - The quarterly report will include a comparison of the current year's data and corrective actions with those from prior years and will provide an assessment of the agency's progress in addressing sexual abuse.

- The TRCC's report will be approved by the Clinical Director of TRCC and made readily available to the public through its website and/or other means.
- The TRCC may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

DATA STORAGE, PUBLICATION AND DESTRUCTION: (PREA STANDARD 115.289)

1. The TRCC will ensure that data collected pursuant to this policy and procedures are securely retained.

Procedures:

- a. Before making aggregated sexual abuse data publicly available, the TRCC will remove all personal identifiers.
- b. The agency will maintain sexual abuse data collected pursuant to state law.
- c. All case records associated with claims of sexual abuse, including incident reports, investigation reports, resident information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and counseling will be retained, in accordance with North Dakota statute.
- d. At the completion of an investigation, the staff investigator will compile all documentation, including the investigative report, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to administrative staff for scanning into the resident's case history file. Information in resident's case history files will be retained for 50 years following the resident's release from custody. (North Dakota Century Code 25.03.3.04)
- e. The PREA compliance manager will review the case history files and compile data and statistics on the number of sexual abuse and sexual harassment incidents that occurred the prior calendar year. Each PREA compliance manager will forward information to the warden and the PREA Coordinator by January fifth containing the previous year's PREA statistics. This information will be forwarded by the PREA coordinator to the appropriate federal agency by January tenth of each year.

AUDITS OF STANDARDS: (PREA STANDARD 115.93) (PREA STANDARD 115.401)

1. Starting on November, 2014 and during each three-year period thereafter, the TRCC will ensure it is audited at least once.
 - a. The TRCC will bear the burden of demonstrating compliance with the standards.
 - b. The auditor will review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
 - c. The auditor will review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
 - d. The auditor will have access to, and will observe, all areas of the audited facilities.
 - e. The auditor will be permitted to request and receive copies of any relevant documents (including electronically stored information).
 - f. The auditor will retain and preserve all documentation including, video tapes and interview notes relied upon in making audit determinations. Such documentation will be provided to the DOJ, upon request.
 - g. The auditor will interview a representative sample of residents, residents, and detainees, and of staff, supervisors, and administrators.
 - h. The auditor will review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
 - i. The auditor will be permitted to conduct private interviews with residents, residents, and detainees.
 - j. Residents, residents, and detainees will be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
 - k. Auditors will attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

AUDITOR QUALIFICATIONS: (PREA STANDARD 115.402)

1. Auditors must be certified by the DOJ.
2. An auditor must be a member of a correctional monitoring body that is not part of, or under the authority of, the TRCC but may be part of, or authorized by, North Dakota State or local government.
3. An auditor must be a member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the TRCC.
4. Auditors may be other outside individuals with relevant experience.
5. No audit may be conducted by an auditor who has received financial compensation from the TRCC within three years prior to the TRCC's retention of the auditor.
6. The TRCC will not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the TRCC's retention of the auditor, with the exception of contracting for subsequent PREA audits.

Audit Content and Findings: (PREA STANDARD 115.403)

7. Each audit will include a certification by the auditor that no conflict of interest exists with respect to their ability to conduct an audit of the TRCC.
8. Audit reports will state whether TRCC directives, policies and procedures comply with relevant PREA standards.
9. For each PREA standard, the auditor will determine whether the audited facility reaches one of the following findings:
 - Exceeds Standard:
 - Substantially exceeds requirements of the standard.
 - Meets Standard:
 - Substantial compliance; complies in all material ways with the standard for the relevant review period.
 - Does Not Meet Standard:
 - Requires corrective action.
10. The audit summary will indicate, among other things, the number of provisions the facility has achieved at each grade level.

11. The audit reports will describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and will include recommendations for any required corrective action.
12. The audit reports will describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and will include recommendations for any required corrective action.
13. Auditors will redact any personally identifiable resident or staff information from their reports, but will provide such information to the TRCC upon request, and may provide such information to the DOJ.
14. The TRCC will ensure that the auditor's report is published on the TRCC website or provide other means so the report is readily available to the public.

AUDIT CORRECTIVE ACTION PLAN: (PREA STANDARD 115.404)

- A finding of "Does Not Meet Standard" with one or more standards will trigger a 180-day corrective action period.
- The auditor and the TRCC will jointly develop a corrective action plan to achieve compliance.
- The auditor will take necessary and appropriate steps to verify implementation of the corrective action plan such as reviewing updated policies and procedures or re-inspecting portions of the facility.
- After the 180-day corrective action period ends, the auditor will issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.
- If the TRCC does not achieve compliance with each standard; it may (at TRCC discretion and cost) request a subsequent audit once it believes compliance has been achieved.

AUDIT APPEAL: (PREA STANDARD 115.405)

- TRCC may lodge an appeal with the DOJ regarding and specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.
- If the DOJ determines that the TRCC has stated for good cause for a re-evaluation, the TRCC may commission a re-audit by an auditor mutually

agreed upon by the DOJ and TRCC. The TRCC will bear the costs of this re-audit.

- The findings of the re-audit will be considered final.